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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/395,106    09/14/99    WESTHOFF

J    POL3.036

EXAMINER

003624    PM82/1012  
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TRAN A D

ART UNIT

PAPER NUMBER

3635  
DATE MAILED:

10/12/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. 09/395,106	Applicant(s) WESTHOFF ET AL.	
	Examiner Phi D A	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-44 is/are pending in the application.  
     4a) Of the above claim(s) 1-20, 28, 29 and 37-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 30-36 is/are allowed.
- 6) ☐ Claim(s) 21-27 and 41-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |                                                                                                            |                                                                             |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> | 6) <input type="checkbox"/> Other:                                          |

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*Election/Restrictions*

1. Applicant's election with traverse of group II in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the search for group III would involve the search for group II. This is not found persuasive because the method steps claim are not required of group III; for example, step (g) "withdrawing said pin assembly from the casting material...." is not needed of the claimed limitations of group III, be it combination or subcombination.

The requirement is still deemed proper and is therefore made FINAL.

*Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 21, 23, 27, 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 line 5 "ends and having" is indefinite.

Line 13 "with and longitudinal" is indefinite.

Claim 23 line 2 "at said another one" is indefinite. It is unclear which ends is being claimed, the open or the closed end.

Claim 27 line 8 "ends and having" is indefinite.

Claim 43 line 2 "surface bring" is indefinite.

*Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 21-26, 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Brooks.

Brooks (figure 1) shows an insert having a hollow substantially cylindrical shaped elongated housing having an open end and a close end (4), one of said ends having a flange (10) lying in a plane diagonally aligned with a longitudinal axis of said housing, another one of said ends having a flange (8) lying in a plane perpendicular to said longitudinal axis, an interior surface of said housing having a portion thereof being provided with a plurality of annular projections (the threads) arranged at spaced intervals and extending radially inward, each projection having a tapering cross-section defined by a first surface diagonally aligned with the longitudinal axis and facing the open end (the tapering surface of the thread when looked upon from the open end), a second surface (the tip of the thread) perpendicular to the closed end, a plurality of ears (6) integrally joined at the open end of said housing and projecting away from the housing, each having a hooked-shaped configuration and cooperating with a flange adjacent said open end to embrace a marginal portion surrounding an opening, said end at said another one of said ends adapted to cover an opening, the flanges (8) being annular and extending radially outwardly from the housing and spaced along the housing, said closed end having an annular flange (8) integral with said housing and extending radially outward therefrom, a portion of said housing adjacent to said closed ends and a said closed end having a thickness which is

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chosen to provide additional structural strength (inherently so from the structure), at least an exterior portion(10) of the surface of the closed end being inclined relative to said longitudinal axis.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ditcher in view of Peacock and Marino.

Ditcher (figure 2) shows in combination an insert and a reciprocable pin assembly having a hollow substantially rectangular insert, the insert having a housing with an open end and a closed end, one of said ends having a flange lying in a plane perpendicularly aligned with a longitudinal axis of said housing, said pin being rectangular, the pin having a first portion of a different cross-section than a second portion of the pin.

Ditcher does not show the insert and the pin being substantially cylindrical in shape, the insert having slots for insertion of a projection ledge of the pin, the ledge being formed by a first and second diameter of the pin at the juncture thereof, a projection being arranged on said ledge and extending into said slot on the insert.

Peacock discloses a pin having different cross sections forming annular ledges for insertion into openings for forming step and to fasten the pin in the opening.

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Marino discloses the use of a fastener (16) to locate and fasten a pin(4) into position on an insert with holes in a manhole step assembly.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ditcher to show the insert and the pin being substantially cylindrical in shape, the insert having slots for insertion of a projection ledge of the pin, the ledge being formed by a first and second diameter of the pin at the juncture thereof, a projection being arranged on said ledge and extending into said slot on the insert because it is a matter of design choice to make the insert and the pin of a substantially cylindrical shape as the assembly functions the same to provide steps for manhole, and it would have been obvious to show the inserts having slots for insertion of a projection from the pin because it would allow for the proper alignment, and fastening of a substantially cylindrical pin in a substantially cylindrical insert.

*Allowable Subject Matter*

7. Claims 30-36 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: prior art does not show the diagonal flange intermediate the first and second ends, and the slots in combination with other claimed structures. Prior art also does not provide sufficient motivations to modify the references Bowen, Zenhausern et al, or Takahashi to show the claimed limitations.

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*Conclusion*

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different manhole step designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A  
October 9, 2001

PA

  
**Carl D. Friedman**  
**Supervisory Patent Examiner**  
**Group 3600**